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| CLERK US DISTRICT COURT | |
| DISTRICT OF NEVADA | |
| BY: <i>[Signature]</i> | DEFUTY |

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5

6 **UNITED STATES DISTRICT COURT**
 7 **DISTRICT OF NEVADA**

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-oOo-

9 UNITED STATES OF AMERICA)
 10 Plaintiff,) CR-S-04-
 11 vs) **PLEA MEMORANDUM**

12 CR-S-04-0244-JCM-RJJ
 13 ATV ADVENTURES, INC.,
 13 a Nevada Corporation

14 Defendant.

15

16 The United States, by and through Daniel G. Bogden, United States Attorney, and
 17 Margaret M. Stanish, Assistant United States Attorney, the defendant-corporation, **ATV**
 18 **ADVENTURES, INC.**, by and through its authorized representative, Christine Ward, President, and
 19 its attorney, Daniel J. Albregts, Esquire, submit this plea memorandum.

20

I.

21

PLEA AGREEMENT

22

The United States and the defendant have reached the following plea agreement, which
 23 is not binding on the court:

24

The Plea

25

1. **ATV ADVENTURES, INC.** will plead guilty to Counts One and Two of the
 26 Information, charging it with Removal, Damage and Alteration of Archaeological Resources,

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1 felony violations of the Archaeological Resource Protection Act, Title 16, United States Code,
2 Section 470ee(a), and Aiding and Abetting, Title 18, United States Code, Section 2. At the request
3 of the defendant-corporation, this agreement also disposes of certain administrative actions, as more
4 fully described below.

5 **Additional Charges**

6 2. The United States Attorney's Office for the District of Nevada (hereinafter "The
7 United States") will bring no additional charges against the defendant arising out of the investigation
8 in the District of Nevada which culminated in this Plea Memorandum. Except as provided herein, the
9 Bureau of Land Management will take no additional administrative action against the defendant's
10 Special Recreation Permit, granted on September 25, 2000, for violations arising out of the
11 investigation in the District of Nevada which culminated in this Plea Memorandum.

12 **Sentencing Guideline Considerations and Recommendations**

13 3. Pursuant to U.S.S.G., §§ 8C2.1, the parties agree that the Sentencing Guidelines
14 for determining the fine do not apply since the defendant violated the Archaeological Resource
15 Protection Act. The parties agree that the defendant shall pay a fine of \$60,000, to be suspended
16 according to the terms set forth below in Paragraph 4.B.

17 4. The parties agree that the defendant serve a term of probation of two years with
18 the following conditions:

19 A. **Compliance Program:** At the time of sentencing, the defendant will
20 submit to the Court a program to prevent and detect violations of the Archaeological Resource
21 Protection Act. Such compliance program shall include a schedule of implementation. The defendant
22 shall notify all employees of its criminal behavior and its program to prevent and detect violations of
23 the Archaeological Resource Protection Act.

24 B. **Community Service:** The parties agree that the fine be suspended for
25 the explicit purpose of enabling the defendant to apply the suspended amount to the performance of
26 community service pursuant to U.S.S.G., § 8B1.3 and in furtherance of the sentencing principles

1 delineated in 18 U.S.C. § 3553(a). The explicit goals of the defendant's community service are to
2 protect and preserve archeological resources in the District of Nevada by financially supporting: (1)
3 a public education program on the Archeological Resource Protection Act (16 U.S.C. §§ 470, et seq.)
4 and Native American Graves Protection and Repatriation Act (18 U.S.C. § 1170); (2) investigation
5 and prosecution of violations of said statutes; and (3) the monitoring the defendant's adherence with
6 the compliance program set forth above. Accordingly, the parties agree that the defendant will pay
7 \$60,000 to the National Park Foundation (the "NPF"), 16 U.S.C. § 19e, et seq. The NPF is a
8 charitable and nonprofit corporation established pursuant to 16 U.S.C. §§ 19e-19o. It was established
9 to encourage "private gifts of real and personal property" for the benefit of the National Park Service
10 in order "to further the conservation of natural, scenic, historic, scientific, educational, inspirational,
11 or recreational resources for future generations of Americans." Id. § 19e. The NPF is empowered to
12 "do any and all lawful acts necessary or appropriate to its purposes," including acceptance and
13 administration of any "gifts, devises, or bequests." Id. §§ 19g and 19j.

14 **Restitution**

15 5. The defendant shall pay restitution in the sum of \$13,578 to the Bureau of Land
16 Management for restoration and repair of the damaged and altered archeological resources caused by
17 the offense, including relevant conduct. In return for this agreement, the United States will not bring
18 additional charges against the defendant arising out of the investigation which culminated in this Plea
19 Memorandum. The defendant understands that any restitution imposed by the Court may not be
20 discharged in whole or in part in any present or future bankruptcy proceeding.

21 **Special Assessment**

22 6. The defendant will pay the special assessment of \$400 for each count of
23 conviction at the time of sentencing.

24 **Special Recreation Permit**

25 7. The defendant has requested that the United States globally resolve criminal
26 charges in the instant case along with administrative violations of its Special Recreation Perrnit issued

1 by the Bureau of Land Management (“BLM”). To resolve the administrative violations arising from
2 the investigation which culminated in this Plea Memorandum:

3 A. **ATV ADVENTURES, INC.**’s Special Recreation Permit (“Permit”), granted
4 by BLM on September 25, 2000, pursuant to 43 United States Code (U.S.C.)
5 1201; 43 U.S.C. 1701; 16 U.S.C. 460 L-6(a) and 43 Code of Federal
6 Regulations (CFR) Group 8300, shall be suspended for a period of 30 days
7 during calendar year 2004. **ATV ADVENTURES, INC.**, shall select the 30
8 days during which it will suspend its operations under the Permit and will
9 notify BLM of the dates it will suspend operations within 30 days from the date
10 of entry of the Plea Memorandum.

11 B. **ATV ADVENTURES, INC.**, agrees as a condition of the Plea Memorandum
12 that should it violate any term or condition of the Plea Memorandum or the
13 Permit, its Permit granted by BLM on September 25, 2000, pursuant to 43
14 United States Code (U.S.C.) 1201; 43 U.S.C. 1701; 16 U.S.C. 450 L-6(a) and
15 43 CFR Group 8300, shall be cancelled by BLM. **ATV ADVENTURES, INC.**,
16 further agrees that should its permit be cancelled by BLM for violation of a
17 term or condition of the Plea Memorandum or the Permit, **ATV
18 ADVENTURES, INC.**, voluntarily waives any and all right to appeal
19 cancellation of its permit either to an administrative body such as BLM, the
20 Interior Board of Land Appeals, the Department of the Interior, or to a
21 competent judicial forum.

22 **Waiver of Appeal**

23 8. In exchange for the concessions made by the Untied States in this plea
24 agreement, the defendant knowingly and expressly waives the right to appeal any sentence that is
25 imposed within the applicable Sentencing Guideline range as determined by the court, further waives
26 the right to appeal the manner in which that sentence was determined on the grounds set forth in Title

1 18, United States Code, Section 3742, and further waives the right to appeal any other aspect of the
2 conviction or sentence, including restitution.

3 **Additional Promises, Agreements, and Conditions**

4 9. The parties agree that no promises, agreements, and conditions have been
5 entered into other than those set forth in this plea memorandum, and not will be entered into unless
6 in writing and signed by all parties.

7 **II.**

8 **PENALTY**

9 1. The maximum fine is \$500,000 per count pursuant to 18 U.S.C. § 3571(c)(3).
10 2. The defendant is subject to term of probation not exceeding one 5 years.
11 3. The defendant must pay a \$400 special assessment for each count of conviction
12 for a total special assessment of \$800.

13 4. The defendant is required to pay for the costs of probation.

14 **III.**

15 **ELEMENTS**

16 The essential elements for the crime of Removal, Damage and Alteration of
17 Archaeological Resources, Title 16, United States Code, Section 470ee(a), are the following:

18 First: the defendant knowingly excavated, removed, damaged, altered or
19 defaced archeological resources, that is, Native American artifacts and
other artifacts that were of archaeological interest and at least 100 years
of age;

20 Second: the defendant knew that such Native American artifacts and other
artifacts were of archaeological interest and at least 100 years of age;

21 Third: the defendant excavated, removed, damaged, altered or defaced
22 archeological resources located on federal public lands without a
permit; and

23 Fourth: the archeological resources involved a cost of restoration and repair
24 plus the archeological value exceeding \$500.

25

IV.

FACTS

3 The defendant is pleading guilty because it is guilty of Counts One and Two as charged
4 in the information. In pleading to these offenses, the defendant acknowledges that if it elected to go
5 to trial instead of entering this plea, the United States could prove facts sufficient to establish the
6 defendant's guilt beyond a reasonable doubt. The defendant specifically admits the following facts,
7 and declares under penalty of perjury that these facts are true and correct:

8 1. At all times relevant, **ATV ADVENTURES, INC.** was a Nevada corporation
9 engaged in the business of providing all-terrain vehicle (“ATV”) tours on federal public lands located
10 in Logandale, Nevada. Between on or about October 2001 and July 2003, **ATV ADVENTURES,**
11 **INC.**, through its employees, routinely collected Native American artifacts from Smithsonian Sites
12 26CK1913 and 26CK192, which were located on public lands under the jurisdiction of the
13 Bureau of Land Management. After taking the artifacts from the sites, the employees displayed
14 the artifacts on rocks for viewing by customers of **ATV ADVENTURES, INC.** Furthermore,
15 employees of **ATV ADVENTURES, INC.** caused some customers to take and carry away artifacts
16 from the sites.

17 3. At all times relevant, **ATV ADVENTURES, INC.**, through its employees,
18 knew that the Native American artifacts were at least 100 years old and of archaeological interest.
19 Furthermore, **ATV ADVENTURES, INC.** and its employees knew that they did not have a permit
20 to excavate, remove, damage, alter, and deface archeological resources on federal public lands.
21 The archeological value, commercial value, and cost of restoration and repair of the affected
22 archeological resources is approximately \$41,798.53.

V.

ACKNOWLEDGMENT

25 The undersigned defendant, **ATV ADVENTURES, INC.**, acknowledges by the signature of the
26 below authorized representative that the defendant has read this Memorandum of Plea Agreement, that

1 it understands the terms and conditions, and the factual basis set forth herein, that it has discussed
2 these matters with its attorney, and that the matters set forth in this Memorandum, including those
3 facts which support a plea of Guilty, are true and correct.

4 The undersigned authorized representative of **ATV ADVENTURES, INC.**,
5 acknowledges that defendant organization has been advised, and understands, that by entering a plea
6 of Guilty it is waiving, that is, giving up, certain rights guaranteed to the defendant organization by
7 law and by the Constitution of the United States. Specifically, the defendant organization is giving
8 up:

9 The right to proceed to trial by jury on the original charges, or to a trial by a judge if
10 it and the United States both agree;

11 The right to confront the witnesses against it at such a trial, and to cross-examine them;

12 The right to remain silent at such trial, with such silence not to be used against it in any
13 way;

14 The right, should the defendant organization so choose, to testify in its own behalf at
15 such a trial;

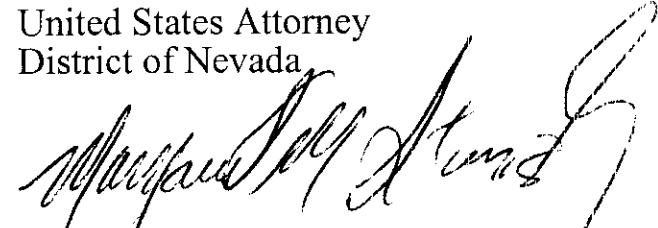
16 The right to compel witnesses to appear at such a trial, and to testify in behalf of the
17 defendant organization; and,

18 The right to have the assistance of an attorney at all stages of such proceedings.

19 The undersigned defendant organization through its authorized representative, the
20 defendant's attorney, and the attorney for the United States acknowledge that this Memorandum of
21 Plea Agreement and the attached Administrative Licensing and Forfeiture Stipulation are the entire
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23 . . .
24 . . .
25 . . .
26

1 agreement negotiated by and agreed to by and between the parties, and that no other promises have
2 been made or implied by either the defendant, its attorney, or the attorney for the United States.
3

4 DANIEL G. BOGDEN
5 United States Attorney
6 District of Nevada

7 
8 MARGARET M. STANISH
9 Assistant United States Attorney

10 
11 CHRISTINE WARD
12 President
13 In her capacity as an authorized representative for
14 **ATV ADVENTURES, INC.**

15 
16 DANIEL J. ALBREGTS, Esquire
17 Counsel for **ATV ADVENTURES, INC.**